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January 7, 2009

The Honorable Charles W. Albertson, Co-Chair
The Honorable Daniel G. Clodfelter, Co-Chair
The Honorable Lucy T. Allen, Co-Chair
The Honorable Pryor A. Gibson, Co-Chair
Environmental Review Commission

Subject: Emissions Reductions Beyond the Clean Smokestacks Act

Dear Senator Albertson, Senator Clodfelter, Representative Allen, Representative Gibson:

SL2002-4 Section 11 (attached) called for the Environmental Management Commission to study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) beyond those required by the Clean Smokestacks Act. The EMC was also to report its findings and recommendations annually to the General Assembly and the Environmental Review Commission.

Since the Clean Smokestacks Act was passed in June 2002, significant Federal regulatory changes have occurred. The Clean Air Interstate Rule (CAIR) requires North Carolina's neighboring states to achieve major reductions in NO_x and SO₂ -- reductions that require installation of state-of-the-art control equipment. Although on July 11, 2008 the D.C. Circuit vacated CAIR, on December 23, 2008 the Court granted EPA's petition to remand the case without vacatur. EPA now expects to propose a revised CAIR rule in about two years.

As Federal decision-makers revise CAIR to address the Court's order, they may also consider a separate action taken on March 12, 2008 when the EPA promulgated the most stringent 8-hour standard ever for ozone, revising the standard for the first time in more than a decade. The North Carolina Division of Air Quality has begun the technical analysis necessary to define which sources need additional NO_x controls beyond Clean Smokestacks requirements in order for areas in North Carolina to attain the new ozone standard. It is reasonable to believe that

the revised CAIR will require power plant emission reductions even greater than the original rule in order to meet the more stringent ozone standard.

The Clean Smokestacks Act already required installation of state-of-the-art control equipment on many units in North Carolina. CAIR annual budgets of NO_x and SO₂ emissions are even lower than those set by the Clean Smokestacks Act. Implementation of CAIR could result in installation of state-of-the-art control equipment on more units in N.C.

Given the recent actions by the Federal government and the D.C. Circuit Court regarding power plant emissions, it is recommended that the study of whether or not further State action is required be deferred for evaluation of the progress of North Carolina and its neighbors in complying with the original CAIR and of improvements EPA may propose to the revised CAIR. The EMC proposes to begin this reporting on December 1, 2013. This will give the specified electric generation facilities in North Carolina time to implement their control strategies and will also give the DAQ time to quantify the air quality impacts. Any reports made prior to the implementation of these control strategies likely would provide little new or beneficial information. Also since evolution of new control technologies is fairly long-term, we recommend that reporting thereafter be on a three-year basis.

Sincerely,

A handwritten signature in black ink that reads "Stephen T. Smith". The signature is written in a cursive, slightly stylized font.

Stephen T. Smith
Chairman
N.C. Environmental Management Commission

Attachment

Cc: Keith Overcash, DAQ
Sheila Holman, DAQ
Donnie Redmond, DAQ
Elizabeth Biser, DENR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2002-4
SENATE BILL 1078

AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY IMPOSING LIMITS ON THE
EMISSION OF CERTAIN POLLUTANTS FROM CERTAIN FACILITIES THAT BURN COAL
TO GENERATE ELECTRICITY AND TO PROVIDE FOR RECOVERY BY ELECTRIC
UTILITIES OF THE COSTS OF ACHIEVING COMPLIANCE WITH THOSE LIMITS.

The General Assembly of North Carolina enacts: ...

SECTION 11. The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO₂) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO₂) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2005. ...

In the General Assembly read three times and ratified this the 19th day of June, 2002.

(Note: The initial reporting date was changed to 1 September 2007 by Senate Bill 1590, Section 12, Session 2005.)